

CHAPTER 100  
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

The Iowa department of economic development hereby adopts, with the following exceptions and amendments, rules of the Governor's Task Force on Uniform Rules of Agency Procedure relating to public records and fair information practices which are printed in the first volume of the Iowa Administrative Code.

**261—100.1(17A,22) Definitions.** As used in this chapter:

"Agency." In lieu of the words "(official or body issuing these rules)", insert "department of economic development".

**261—100.3(17A,22) Requests for access to records.**

**100.3(1) Location of record.** In lieu of the words "(insert agency head)", insert "director of the agency". In lieu of the words "(insert agency name and address)", insert "Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; (515)281-3251".

**100.3(2) Office hours.** In lieu of the words "(insert customary office hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)", insert "8 a.m. to 4:30 p.m. daily, excluding Saturdays, Sundays and legal holidays".

**100.3(7) Fees.**

*c. Supervisory fee.* In lieu of the words "(specify time period)", insert "one hour".

**261—100.9(17A,22) Disclosures without the consent of the subject.**

**100.9(1)** Open records are routinely disclosed without the consent of the subject.

**100.9(2)** To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

*a.* For a routine use as defined in rule 100.10(17A,22) or in the notice for a particular record system.

*b.* To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.

*c.* To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

*d.* To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known address of the subject.

*e.* To the legislative fiscal bureau under Iowa Code section 2.52.

*f.* Disclosures in the course of employee disciplinary proceedings.

*g.* In response to a court order or subpoena.

**261—100.10(17A,22) Routine use.**

**100.10(1)** Defined. "Routine use" means the disclosure of a record without the consent of the subject or subjects, for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

**100.10(2)** To the extent allowed by law, the following uses are considered routine uses of all agency records:

*a.* Disclosure to those officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may upon request of any officer or employee or on the custodian's own initiative, determine what constitutes legitimate need to use confidential records.

*b.* Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

*c.* Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the agency.

*d.* Transfers of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

*e.* Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

*f.* Any disclosure specifically authorized by the statute under which the record was collected or maintained.

**261—100.11(17A,22) Consensual disclosure of confidential records.**

**100.11(1)** Consent to disclosure by a subject individual. The subject may consent in writing to agency disclosure of confidential records as provided in rule 100.7(17A,22).

**100.11(2)** Complaints to public officials. A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the agency may be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

**261—100.12(17A,22) Release to subject.**

**100.12(1)** The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 100.7(17A,22). However, the agency need not release the following records to the subject:

*a.* The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18).

*b.* Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

*c.* Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code. (See Iowa Code section 22.7(5))

*d.* As otherwise authorized by law.

**100.12(2)** Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

**261—100.13(17A,22) Availability of records.**

**100.13(1)** *Open records.* Agency records are open for public inspection and copying unless otherwise provided by rule or law.

**100.13(2)** *Confidential records.* The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

*a.* Sealed bids received prior to the time set for public opening of bids. (Iowa Code section 73.2)

*b.* Tax records made available to the agency. (Iowa Code sections 422.20 and 422.72)

c. Industrial prospect files. The department maintains records of industrial prospects with whom it is currently negotiating. The list is considered confidential under Iowa Code section 22.7(8).

d. National marketing client database. The department maintains a database of business prospects. This list identifies companies that are seeking new locations for their businesses. This list is considered confidential under Iowa Code sections 22.7(3) and 22.7(6).

e. Records which are exempt from disclosure under Iowa Code section 22.7.

f. Minutes of closed meetings of a government body as permitted under Iowa Code section 21.5(4).

g. Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1)“d.”

h. Those portions of agency staff manuals, instructions or other statements issued which set forth criteria or guidelines to be used by agency staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics on allowable tolerances or criteria for the defense, prosecution or settlement of cases, when disclosure of those statements would:

(1) Enable law violators to avoid detection;

(2) Facilitate disregard of requirements imposed by law; or

(3) Give a clearly improper advantage to persons who are in an adverse position to the agency. (Iowa Code sections 17A.2 and 17A.3)

i. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa R.C.P. 122(c), Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

j. Any other records considered confidential by law.

**100.13(3) Authority to release confidential records.** The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 100.5(17A,22). If the agency initially determines that it will release such records, the agency may, where appropriate, notify interested parties and withhold the records from inspection as provided in subrule 100.4(3).

**261—100.14(17A,22) Personally identifiable information.** This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 100.1(17A,22). This rule describes the means of storage of that information and indicates whether a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system. Unless otherwise stated, the authority for this department to maintain the record is provided by Iowa Code chapter 15. The record systems maintained by the agency are:

**100.14(1) Personnel files.** Personnel records of department employees are maintained at the agency. Records of staff include such personally identifiable information as name, address, social security number and employee payroll number. Other data contained in staff personnel records are salary information, seniority date, employee deduction forms, insurance and savings bond contributions, deferred compensation information, current leave information, performance evaluations and performance review dates. Some information may be confidential under Iowa Code section 22.7(11). Data processing systems do not match, collate or compare the personally identifiable information of the staff personnel records with personally identifiable information contained in the records of other agencies.

**100.14(2) *Travel records.*** The department maintains travel records of agency staff. Personally identifiable information collected includes the name, address, and social security number of the individual. This information is collected pursuant to Iowa Code section 421.39. Data processing systems do not match, collate or compare the personally identifiable information collected with similar information collected by other state agencies.

**100.14(3) *Claim vouchers.*** Requests for reimbursement from agency staff, contractors, and grantees are maintained by the department. These records contain the name, address and social security number of the individual requesting reimbursement for expenses. This information is collected pursuant to Iowa Code section 421.40. The information is not maintained in a data processing system which matches, collates or compares the information with other systems containing personally identifiable information.

**100.14(4) *Contracts and grant records.*** Contractual agreements and grant agreements are maintained by the department. These records contain personally identifiable information when the agreement is with a specific individual. In those instances, the records include the name, address and social security number of the contractor/grantee. Other information in these records may include the proposal or work statement of the contractor or grant recipient, budget figures, modifications, correspondence and business information. Personally identifiable information is not contained in a data processing system which collates, matches or compares this information with other systems containing personally identifiable information.

**100.14(5) *Payroll records.*** Payroll records include time sheets of individuals, listings of prior years' earnings, current listings of deductions, and insurance billings. Personally identifiable information is included in these records. An employee's name, address and social security number are maintained in the payroll record. Personally identifiable information is not contained in a data processing system which collates, matches or compares personally identifiable information.

**100.14(6) *Job Training Partnership Act (JTPA) records.*** The department does not actually collect participant files, but it does have access to participant files developed and maintained by local JTPA grantees. These files do contain personally identifiable information such as name, address, and social security number of the participant. The agency does maintain records of complaints filed under the department's JTPA complaint procedures. Personally identifiable information such as an individual's name, address and telephone number, is included in the complaint records. Personally identifiable information is collected about JTPA participants pursuant to Iowa Code chapter 7B and 29 U.S.C. 1501. Data processing systems match, collate, and compare personally identifiable information contained in local grantee data processing systems.

**100.14(7) *Grant and loan application records.*** The department administers a variety of state and federal grant and loan programs. Records of persons or organizations applying for grants, awards or funds are available through the agency. These records may contain information about individuals collected pursuant to specific federal or state statutes or regulations. Personally identifiable information such as name, address, social security number and telephone number may be included in these records where the applicant is an individual. Many program applicants are political subdivisions or corporations, not individuals.

**100.14(8) *Targeted small business certification applications.*** The department is authorized to certify targeted small businesses pursuant to Iowa Code section 15.108(7) "c." When the applicant is an individual, personally identifiable information, such as the individual's name, address, and social security number, is collected. The following information may be included in the record: tax information, partnership agreements, birth certificate(s), loan agreements, business licenses, financial statements, health records, will(s) and bank signature cards. Some information may be considered confidential.

**100.14(9) *Litigation files.*** These files or records contain information regarding litigation or anticipated litigation, which includes judicial and administrative proceedings. The records include briefs, depositions, docket sheets, documents, correspondence, attorney's notes, memoranda, research materials, witness information, investigation materials, information compiled under the direction of the attorney, and case management records. The files contain materials which are confidential as attorney work product and attorney-client communications. Some materials are confidential

under other applicable provisions of law or because of a court order. Persons wishing copies of pleadings and other documents filed in litigation should obtain these from the clerk of the appropriate court which maintains the official copy.

**261—100.15(17A,22) Other groups of records.** This rule describes groups of records maintained by the agency other than record systems as defined in rule 100.1(17A,22). These records are routinely available to the public. However, the agency's files of these records may contain confidential information as discussed in rule 100.13 (17A,22). The records listed may contain information about individuals. Unless otherwise stated, the authority for the department to maintain the record is provided by Iowa Code chapter 15.

NOTE: The records listed in rules 100.13(17A,22) and 100.14(17A,22) are under review to determine which portions are confidential and which are open to the public.

**100.15(1) Rule making.** Rule-making records may contain information about individuals making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. Public documents generated during the promulgation of agency rules, including notices and public comments, are available for public inspection. This information is not stored in an automated data processing system.

**100.15(2) IDED board records.** Agendas, minutes, and materials presented to the Iowa department of economic development are available from the agency except confidential records. Those records concerning closed sessions are exempt from disclosure under Iowa Code section 21.5(4). Board records contain information about people who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. This information is not retrieved by individual identifier and is not stored on an automated data processing system.

**100.15(3) Statistical reports.** Periodic reports of various agency programs are available from the department of economic development. Statistical reports do not contain personally identifiable information.

**100.15(4) Appeal decisions and advisory opinions.** All final orders, decisions and opinions are open to the public except for information that is confidential according to rule 100.13(17A,22).

**100.15(5) Publications.** Publications include news releases, annual reports, project reports, agency newsletters, etc., which describe various agency programs and activities. Agency news releases, project reports, and newsletters may contain information about individuals including agency staff or members of agency councils or committees.

**100.15(6) Address lists.** The names and mailing addresses of members of boards and councils, work groups, program grantees and members of the public indicating interest in particular programs and activities of the agency are maintained to generate mailing labels for mass distribution of agency mailings.

**100.15(7) Appeal decisions and advisory opinions.** All final orders, decisions and opinions are open to the public except for information that may be confidential according to rule 100.13(17A,22).

**100.15(8) Published materials.** The agency uses many legal and technical publications in its work. The public may inspect these publications upon request. Some of these materials may be protected by copyright law.

**261—100.16(17A,22) Applicability.** This chapter does not:

Require the agency to index or retrieve records which contain information about individuals by that person's name or other personal identifier.

Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.

Govern the maintenance or disclosure of, notification of or access to, records in the possession of the agency which are governed by the regulations of another agency.

Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs.

Make available records compiled by the agency in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable regulations of the agency.

These rules are intended to implement Iowa Code section 22.11.

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